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6-6.100

The Authority of the Attorney General to Compromise Cases

The Attorney General has plenary power to compromise or settle any civil or criminal case arising under the internal revenue laws after reference to the Department of Justice for prosecution or defense.

6-6.120 The Authority of the Attorney General to Make Concessions

The Attorney General also has plenary authority to concede a case by deciding to dismiss a suit or abandon defense of a suit. Such concessions are sometimes referred to, particularly in the context of refund suits, as administrative settlements.

6-6.130 Redelegation of Authority to Compromise and Close Civil Claims

The authority to compromise and close civil claims has been redelegated pursuant to Tax Division Directive No. 105. Compromise authority has been delegated to United States Attorneys solely with respect to judgments referred by the Tax Division for collection, as discussed in USAM 6-8.300. Compromise of civil tax cases otherwise requires the approval of the Tax Division.

6-6.140 Redelegation of Authority to Release Rights of Redemption in Certain Cases

The authority to release rights of redemption has been redelegated to the United States Attorney pursuant to Tax Division Directive No. 83 and is discussed in USAM 6-6.700.

6-6.200 No Compromise of Civil Liability When Criminal Case Pending

The view of the Department, sustained by decisions of the courts, is that collection of the related civil liabilities, including fraud penalties, is a matter entirely separate and apart from the criminal aspects of a case. The latter, therefore, should receive priority in disposition. No consideration will be given to settlement of the civil liability until after sentence has been imposed in the criminal case, except where the court chooses to defer sentence in order to permit the defendant an opportunity to settle the civil liability.

6-6.300 Tax Division Approval Required

Except as authorized in Tax Division Directive No. 105, United States Attorneys should not enter into any agreement to compromise, or make any other administrative disposition of, any case under the cognizance of the Tax Division without the specific approval of the Division.

6-6.400 Offers in Compromise -- Form of Offer in Compromise -- General Rule

As a general rule, the Department does not require any printed forms to be used in connection with offers in compromise of tax cases. Ordinarily it is sufficient if the offer is in writing, is signed by the taxpayer or his/her counsel of record, is definite and unambiguous, and sets forth clearly the proposed basis of compromise. A letter from the United States Attorney setting forth the terms of taxpayer's offer will not suffice. The offer should be specific with respect to interest to be paid or refunded.

6-6.412 Form DJ-TD 433

In tax cases in which the offer is based upon inability to pay, a sworn statement of assets and liabilities on Form DJ-TD Form 433 (Statement of Financial Condition and Other Information) should accompany the offer. These forms can be obtained from the Tax Division's Office of Review.

6-6.420 Offers Submitted to the United States Attorney

Generally, upon receipt of an offer, the United States Attorney should forward it directly to the Tax Division, together with any appropriate comments and recommendations if it is a case in which he/she has taken an active part.

Normally, it is not necessary that amounts offered to the government accompany the offer when it is submitted. However, the offer should include a specific time when the amount due under the settlement will be paid. Generally, this should be 30 days from the date of the letter accepting the offer.

As to the United States Attorney's authority to accept or reject offers in compromise as to certain judgments and under certain conditions, see USAM 6-8.300.

6-6.421 Payment of Amount Offered

Payment of amounts offered shall be by cashier's or certified check, or money order, made payable to Internal Revenue Service. If a check or money order is submitted with the offer, the United States Attorney should hold the check or money order pending action on the offer. If the offer is accepted, the check or money order should be deposited through the direct deposit (lockbox) system pursuant to OBD Order 2110.19 (June 23, 1986) (*see* Tax Resource Manual at 39 *et seq.*), and the Tax Division and the Internal Revenue Service Center advised. If the offer is rejected, the check or money order should be returned to the offeror.

The Tax Division should be advised immediately in the event that any check is dishonored, or any payment is not made when due.

6-6.422 Time for Processing Offers

United States Attorneys should make a suitable allowance of time to permit action on offers in compromise. It is the Division's policy to obtain the recommendation of the IRS District Counsel on offers in compromise of tax cases, except in cases that District Counsel has classified as S.O.P. (Settlement Option Procedure). Moreover, additional computations and/or investigation by the IRS might be necessary before the Department will be in a position to act on the offer. An investigation is almost always necessary when settlement is based on collectibility. For all of these reasons, United States Attorneys should urge the proponents and the courts to allow ample time for the orderly processing of offers. The amount of time required for this purpose will vary, depending upon the nature and complexity of each case, and the amount involved. For example, settlements involving a refund or credit in excess of \$1 million income, excess profits, estate or gift tax, or certain excise taxes must be submitted to the Joint Committee on Taxation. A minimum of 45 days should be allowed even in a relatively uncomplicated matter, where no additional investigation or submission is required.

6-6.430 Offers Submitted to the Division

Frequently, compromise proposals are submitted directly to the Division. It is the Division's general practice to request the United States Attorney's recommendation on the offer when the United States Attorney has had an active part in the case, or if matters particularly within the United States Attorney's knowledge are involved.

During compromise negotiations and the pendency of the offer, the Division will rely upon the trial attorney to secure any additional time for the next step in the court proceedings which may be necessary in order to protect the government's interest and to permit final action by the Division on the proposal.

6-6.440 Opportunity for Conference Regarding Offers

In the event the proponent and/or proponent's counsel desires to confer with the Tax Division, they should be advised that opportunity for an informal conference in Washington, D.C., will be afforded upon timely request. The United States Attorney may be requested to participate in these conferences in appropriate cases.

6-6.450 Settlement Negotiations

In those cases where the United States Attorney engages in settlement negotiations, either alone or in conjunction with the trial attorney of the Tax Division, the United States Attorney should impress upon taxpayer's counsel (and also upon the court) that, except as set forth in Tax Division Directive No. 105, offers in compromise in tax cases are subject to final action by the Attorney General or certain officials of the Department in Washington, D.C., to whom the Attorney General has specifically delegated such authority, and that the United States Attorney and the Tax Division trial attorney can do no more than make a recommendation.

6-6.500 Compromises of Government Claims, Including Compromises Based on Inability to Pay -- Statutory Interest

The amount in controversy includes statutory interest under 26 U.S.C. § 6601. Accordingly, interest should not be conceded as part of a settlement unless such concession is justified in light of the taxpayer's inability to pay or litigating hazards (prejudgment) with respect to establishing the government's claim or the amount thereof. In any settlement based on collectibility where the government is receiving less than the total amount of its claims, plus interest, the offer should provide specifically that no part of the payment is deductible for federal income tax purposes.

6-6.520 Collateral Agreements

Generally, when there is a possibility that an individual or corporate taxpayer may come into some money or property (e.g., through earnings, inheritance or gifts), the settlement should include the execution of an individual or corporate collateral agreement (*see* Tax Resource Manual at 45 *et seq.*) providing for the payment of increasing percentages of annual income (as defined in the agreement) over a period of years. The duration of the collateral agreement and the percentages of income should be fixed on the basis of the facts and circumstances of the case. Under the terms of a future income collateral agreement, a taxpayer is obligated to pay, for each year the agreement is in force, graduated percentages, usually ranging between 20 to 50 percent, of "annual income" in excess of a threshold or floor. Guidance concerning acceptable terms can be obtained from the Tax Division's Civil Trial Sections and Office of Review. A discussion of collateral agreements relating to future income of individuals and of corporations can be found in the *Judgment Collection Manual*.

6-6.530 Waiver of Net Operating Losses, Etc.

If the taxpayer has any valuable tax attributes such as net operating losses, bad debt deductions, etc., and is proposing settlement based on collectibility, such tax attributes should be waived for purposes of settlement.

6-6.540 Security for Deferred or Installment Payments

Where the offer provides for deferred or installment payments, including payments pursuant to a collateral agreement, the taxpayer should agree to entry of judgment for the full amount of the government's claim. The settlement should further provide that the judgment will be marked satisfied when the taxpayer has completed his obligations under the settlement, (i.e., paying the amount due under the settlement including any amount due under a collateral agreement).

6-6.550 Tax Division Judgment Collection Manual

The Tax Division *Judgment Collection Manual* contains a discussion on collectibility compromises which discusses these points in greater detail.

6-6.600 Closing Out Cases Compromised or Conceded -- Compromises of Refund Suits

After an offer in compromise of a refund suit has been accepted by the Department, the case will be terminated by dismissal of the suit pursuant to a stipulation for dismissal.

In general, it is the policy of the Tax Division not to permit the terms of a compromise to be set forth in the stipulation. The United States Attorney should send the Tax Division a copy of the dismissal order so that the file may be closed. It is contrary to the policy of the Department to stipulate for judgment in favor of the taxpayer when a case has been compromised, and the United States Attorney should never do so without prior authority from the Tax Division.

6-6.612 Closing Out Cases Compromised or Conceded -- Concessions

After a concession of a refund suit has been approved by the Department, if taxpayer agrees, the case will be terminated by a stipulation of dismissal, each party to bear its own costs and expenses, including attorneys' fees. Otherwise, the parties will simply stipulate to entry of judgment against the United States.

6-6.613 Closing Out Cases Compromised or Conceded -- Issuance of Refund Checks

After an offer has been accepted, or a concession has been approved, the Tax Division will authorize the IRS to issue a refund in the appropriate amount, plus statutory interest. At that time, the case will be transferred within the Tax Division to the Post-Litigation Unit for supervision of the issuance of the refund check and/or notice of credit and the dismissal of the suit or filing satisfaction of judgment. See USAM 6-7.000. The IRS usually requires about 60 days to effect the refund after the amount of the refund has been computed.

In cases handled by the USAOs, the refund check and/or notice of credit due under a compromise will be sent by the Tax Division to the United States Attorney for delivery to taxpayer's counsel only after the United States Attorney has received an executed stipulation of dismissal. The refund check and/or notice of credit due under a concession will be sent by the Tax Division to the United States Attorney for delivery to taxpayer's counsel, together with a stipulation of dismissal or satisfaction of judgment.

6-6.620 Compromises of Government Claims

After the Department's acceptance of an offer in compromise of a case handled by the United States Attorney, where payment to the government is required within a relatively short period of time (e.g., 30 days of notification of acceptance), the United States Attorney will be authorized to execute a stipulation for dismissal of the case or the government's claim upon receipt of the total amount due.

In general, it is the policy of the Tax Division not to permit the terms of a compromise to be set forth in the stipulation. The United States Attorney should send the Tax Division a copy of the dismissal order so that the file may be closed.

When payment to the government is due beyond 90 days of notification of acceptance, generally the settlement will provide for entry of judgment in the government's favor. See USAM 6-6.540, for policy on

security for deferred or installment payments. The United States Attorney should send the Tax Division a copy of the judgment.

Payments due under a compromise should be made by cashier's or certified check payable to the Internal Revenue Service. All such payments (other than those due under a collateral agreement) should be made to the United States Attorney and upon the United States Attorney's receipt should be deposited through the direct deposit (lockbox) system pursuant to OBD Order 2110.19 (June 23, 1986) with advice of receipt of payment made to the Tax Division and the Internal Revenue Service Center. The Tax Division should be advised immediately in the event of any default. Payments required under a collateral agreement should be sent by the taxpayer directly to the Service Center.

6-6.622 Concessions of Government Claims

After approval by the Tax Division of a concession of a government claim in a case being handled by the United States Attorney, if the taxpayer agrees, the stipulation of dismissal will provide that each party will bear its own costs and expenses, including attorneys' fees. Otherwise, the stipulation will simply provide for dismissal of the action.

6-6.700 Release of Right of Redemption

Occasionally the Department is requested to release rights of redemption arising in favor of the United States under 28 U.S.C. § 2410. As set forth in Tax Division Directive No. 83, the United States Attorney may accept an application to release a right of redemption involving (1) real property on which is located only one single-family residence, and (2) all other real property having a fair market value not exceeding \$200,000. The consideration paid for the release must be equal to the value of the right of redemption or \$50, whichever is greater. The limitations as to value or use of the property and consideration to be paid do not apply in those instances where the release is requested by the Department of Veterans Affairs or any other federal agency. Form OBD-225 is the prescribed form of application for release of right of redemption in respect of federal tax liens, copies of which can be requisitioned in the usual manner. Detailed information as to the procedure to be followed is set forth on the back of the application form.

In all instances not covered by the redelegation order, applications for release of rights of redemption should be handled in a manner similar to compromises.